UNITED STATES
v.
CHARLES M. CRAWFORD, d.b.a.
CASI MINING AND MINERAL EXPLORATION CO.

IBLA 86-1447 Decided June 16, 1989

Appeal from a decision of Administrative Law Judge John R. Rampton, Jr., which declared the Cheryl Anne lode mining claim, A-019371, to be null and void.

Affirmed.

1. Administrative Procedure: Administrative Law Judges--Administrative Procedure: Burden of Proof

In order to sustain a charge that an Administrative Law Judge should be disqualified or his decision set aside because of bias or misconduct, a substantial showing of such bias or misconduct must be made. An assumption that he might be predisposed in favor of the Government is not sufficient.

2. Administrative Procedure: Burden of Proof--Evidence: Preponderance--Evidence: Prima Facie Case--Mining Claims: Contests--Mining Claims: Determination of Validity

When the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of refuting the Government's case by a preponderance of the evidence.

3. Mining Claims: Determination of Validity--Mining Claims: Discovery--Mining Claims: Marketability

In order to establish a discovery, the evidence must disclose a mineral deposit such that a man of ordinary prudence would be justified in the expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. This standard has been supplemented by the marketability test, requiring a showing that the mineral deposit can be mined, removed, and marketed at a profit.

APPEARANCES: Charles M. Crawford, pro se, Peoria, Arizona; T. Adrian Pedron, Esq., Office of the General Counsel, U.S. Department of Agriculture, Albuquerque, New Mexico, for the contestant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Charles M. Crawford appeals from the June 10, 1986, decision of Administrative Law Judge John R. Rampton, Jr., which declared the Cheryl Anne lode mining claim, A-019371, to be null and void.

The Arizona State Office, Bureau of Land Management (BLM), initiated these contest proceedings at the request of and on behalf of the Forest Service, U.S. Department of Agriculture (FS). The complaint, filed on September 7, 1984, charged that the mining claim was invalid because "[t]here are not presently disclosed within the boundaries of the mining claim, or were there disclosed as of December 31, 1983, minerals of a variety subject to the mining laws, sufficient in quantity, quality and value to constitute a discovery." 1/

Crawford timely answered the complaint, countering that "[m]ineral does exist on the entitled claim and was even being mined at a substantial profit before the deadline of December 31, 1983"; that the assayers employed by FS followed methods, which, while "standard" in the industry, "are obsolete and are not amenable to the complex type of ores that exist on his claim"; and that FS had "discouraged mineral exploration, such as core drilling, imposed upon the miners a plan of operation that is not necessary for assessment work, and has called for heavy bonds that are prejudicial to the small prospector." He requested a hearing at which he could "bring forth the necessary proof that [he] does have a valid mineral discovery."

The consequent hearing was held in Phoenix, Arizona, on January 18 and 19, 1985, and on March 11 through 15, 1985. In his decision, Judge Rampton reached the following conclusions regarding the subject claim:

> By no stretch of the imagination can it be said that the contestee offered sufficient evidence to meet the prudent man test. The evidence that was offered was wholly incredible and unplausible. Moreover, the contestee did not offer evidence that the claim could be worked profitably, although there were vague references to some sort of a pilot plant operation at an indefinite future date. This is pure speculation only. A few high assays obtained through unverifiable means are certainly no substitute for a discovery. U.S. v. Clyde L. Weekly, 86 IBLA 1, 6 (1985).

(Decision at 24).

In his statement of reasons (SOR) for appeal to the Board, Crawford advances several arguments as to why Judge Rampton's decision is erroneous.

1/ Effective Jan. 1, 1984, the lands on which the claim was located were withdrawn from further location and entry under the mining laws by section 4(d)(3) of the Wilderness Act, 16 U.S.C. § 1133(d)(3) (1982).

First, he argues that the hearing amounted to "a mock trial by a Tribunal that was only interested in the elimination of mining claims in the Wilderness Area," and "that the whole proceeding reeked of Prejudice, errors in judgement or the lack of sound judgement, and the open denial of allowing the Contestee a chance to prove that his extraction procedures did and do in fact work" (SOR at A-1).

[1] Based upon our review of the record, we conclude that Crawford's allegations that the hearing conducted by Judge Rampton was a "mock trial," and that the proceeding "reeked of Prejudice" and bias, are completely without substance. In United States v. Jones, 67 IBLA 225, 230 (1982), the Board stated that "[i]n order to sustain a charge that an Administrative Law Judge should be disqualified or his decision set aside because of bias, a substantial showing of personal bias must be made." Crawford has made no showing of personal bias in this case. In our view, the following statement in the response filed by counsel for FS accurately describes Judge Rampton's conduct during the subject hearing:

> The transcript of testimony, some 1,514 tedious pages in length, clearly demonstrates that Judge Rampton, a highly respected and experienced Administrative Law Judge with 30 years experience (TR 214), conducted himself in an exemplary fashion, and with great solicitude for the rights of the Contestee. For example, Judge Rampton permitted the Contestee's video crew to tape the entire proceedings, a most unusual procedure. He allowed the Contestee to invoke the rule at least as to non-expert witnesses, over the objection of Contestant's counsel (TR 6, 8). Judge Rampton gave a detailed and extensive opening statement that fully outlined the procedure to be followed, the issues involved, and the general law that would be applied (TR 3-6). He gave the Contestee detailed instructions on the rules of evidence as they related to the allowable scope of cross-examination (TR 273). He directed the Contestee's attention to those matters he was most interested in during the testimony (TR 379). Judge Rampton suggested the Contestee take notes during the testimony of Contestant's witnesses in order to conduct a more effective cross-examination and even offered to supply Contestee with paper and pencils for that purpose (TR 145-146). He repeatedly assisted the Contestee in both the direct examination of his own witnesses (TR 368, 377, 394-395) and with cross-examination of the Contestant's witnesses (TR 165, 187, 212, 267, 268, 301, 302, 324, 497, 522). Judge Rampton explained the rules of evidence relative to expert opinions to the Contestee (TR 165-166). He even advised the Contestee of what he believed to be the principal issues in the contest (TR 209). All of this was undoubtedly done in a commendable effort to see that the record was fully developed and to avoid any possible prejudice to the Contestee resulting from the fact that the Contestee was appearing pro se.
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> These laudable attempts of Judge Rampton to be more than fair to the Contestee were somewhat hindered by the Contestee's contemptuous and repeated efforts to engage in improper trial

tactics, even after being repeatedly admonished against such actions by Judge Rampton. He patiently explained the proper procedures to the Contestee, who then proceeded to ignore the explanations. The Court repeatedly admonished the Contestee against putting words in the witnesses mouth (TR 137, 167, 185, 204, 388); against arguing with his rulings (TR 16, 303); against testifying under the guise of questioning a witness (TR 172-175, 186, 297); against interrupting him (TR 210-211); against unfounded allegations of misconduct by Government employees (TR 193, 194). There were other admonishments as well, for such things as not allowing the witness to answer (TR 155, 266, 289, 291, 331, 498); not allowing the witness to explain his answer (TR 270); arguing with the witness (TR 162-163); and against wasting time (TR 260, 267)--but with the observation that he would allow more time upon proper showing (TR 512).

> This repeated misconduct by the Contestee went far beyond the sort of normal errors one would expect from someone appearing pro se, and constituted a direct challenge to the authority of Judge Rampton to conduct an orderly hearing. After a point, Judge Rampton admonished the Contestee that his repeated misconduct was trying the Court's patience (TR 214), challenging his authority (TR 421), insulting his intelligence and straining his credibility (TR 198). At one point Judge Rampton accused the Contestee of treating him like a complete fool (TR 114), and even threatened to take over the Contestee's cross-examination if he persisted in doing it improperly despite repeated prior warnings (TR 138, 214).

(Contestant's Response at 7-8).

We find no merit to appellant's allegation that Judge Rampton's conduct at the hearing prejudiced his position or hampered the presentation of his case in any manner.

[2] In his decision, Judge Rampton describes in detail the testimony, the evidence, and the applicable law, as well as his findings and conclusions. We are in agreement with his decision, and therefore we adopt it as the decision of this Board. A copy of it is attached hereto.

While we are in agreement with Judge Rampton's findings and conclusions, and with his application of the law to the facts of this case, one statement in his decision needs explanation. On page 8 of his decision he states:

> Once the Government concludes its prima facie case, the contestee can move for dismissal and rest, if he really believes the prima facie case is inadequate. If, however, the contestee chooses to go forward and presents evidence, such evidence can be considered against the contestee in deciding whether the claim is valid.

Again, on page 10 of his decision he states that "once a prima facie case has been established, the burden of proof then shifts to the contestee who

must establish the validity of the claim by a preponderance of the evidence." In United States v. Cannon, 70 IBLA 328, 329 (1983), in which the Administrative Law Judge made a similar statement, the Board observed:

> This is an incorrect statement of the law. Absent a patent application, in a mining claim contest hearing, there is no requirement that a mining claimant show that a contested claim is valid, rather, the claimant's burden is to preponderate on the issues raised by the evidence. United States v. Hooker, 48 IBLA 22, 26-27 (1980); see United States v. Imperial Gold, Inc., 64 IBLA 241, 243 (1982).

Despite this general misstatement, Judge Rampton correctly announced the specific legal standard applicable in this case, and he applied it properly. That standard, as reiterated in United States v. Cannon, supra at 330, is that when the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of refuting the Government's case by a preponderance of the evidence. Hallenbeck v. Kleppe, 590 F.2d 852 (10th Cir. 1979); United States v. Springer, 491 F.2d 239, 242 (9th Cir.), cert. denied, 419 U.S. 834 (1974); Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959); United States v. Clyde L. Weekley, 86 IBLA 1, 5 (1985).

[3] In United States v. Wolk, 100 IBLA 167, 168-70 (1987), the Board set forth the conditions that the claimant must show to prove the discovery of a valuable mineral deposit:

> The basic test for determining whether a mining claimant has discovered a valuable mineral deposit on his mining claim is the "prudent man rule." This rule, enunciated in Castle v. Womble, 19 L.D. 455 (1894), states that in order for there to be a discovery, there must be exposed within the limits of the claim minerals of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. The "prudent man rule" is complemented by the "market-ability test." Simply stated, in order to establish the existence of a valuable mineral deposit, it must be shown that the mineral can be extracted, removed, and marketed at a profit. United States v. Coleman, 390 U.S. 599 (1968).

We agree with Judge Rampton that the Government established its prima facie case that Crawford's claim was invalid because there was no discovery of a valuable mineral deposit, and that Crawford fell far short of refuting the Government's case by a preponderance of the evidence. Crawford has not advanced any new legal or factual arguments, other than that the hearing amounted to "mock trial" or a "kangaroo court," that Judge Rampton did not consider thoroughly below. We reject these assertions.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, we affirm Judge Rampton's decision and adopt it with the comments included in this opinion.

Gail M. Frazier
Administrative Judge

I concur:

David L. Hughes
Administrative Judge